

Before the  
Administrative Hearing Commission  
State of Missouri



KATHY BROWN,

Petitioner,

vs.

MISSOURI BOARD OF COSMETOLOGY  
AND BARBER EXAMINERS,

Respondent.

No. 14-1807 CB

**DECISION**

We grant the Missouri Board of Cosmetology and Barber Examiners' ("Board") motion to dismiss, which we deem to be a motion for summary decision.

**Procedure**

On November 13, 2014, Kathy Brown filed a complaint appealing the decision of the Board denying her application for examination/temporary permit. On November 24, 2014, the Board filed a motion to dismiss, stating that Brown was out of time to file the complaint. In the alternative, the Board asked for a decision on the pleadings in its favor. Because the motion relies on material outside Brown's letter of complaint to this Commission, we consider it a motion for summary decision.<sup>1</sup> Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Board establishes facts that Brown does not dispute and entitle the Board to a favorable decision.

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<sup>1</sup> 1 CSR 15-3.436(4)(A). All references to "CSR" are to the Missouri Code of State Regulations as current with amendments, included in the Missouri Register through the most recent update.

We gave Brown until December 10, 2014 to respond to the motion, but she did not respond. Based on the pleadings and the Board's motion, the following facts are not in dispute.

### **Findings of Fact**

1. Brown applied to the Board to take the examination and obtain a temporary permit in hairdressing and manicuring.

2. On October 9, 2014, the Board denied Brown's application on the basis that Brown had not paid contractual fees owed to a cosmetology school. On the same date, the Board notified Brown of its denial by certified mail.

3. The decision letter contains the following language:

If you have additional information which you believe the Board should consider, you may contact the Board office. If you wish to appear before the Board in person, or by counsel, you must contact the board office and schedule an appointment. You also have the right, pursuant to Section 621.120, RSMo 2002, to file a complaint with the Administrative Hearing Commission, which may entitle you to a formal hearing before the Administrative Hearing Commission regarding the Board's denial of your application. If you choose to file a complaint, you must do so within thirty (30) days after the mailing of this notice. The Administrative Hearing Commission's address is 301 West High Street, P.O. Box 1557, Jefferson City, MO 65102.

4. On November 13, 2014, Brown filed her complaint with this Commission.

5. November 13, 2014 was more than thirty days after October 9, 2014.

### **Conclusions of Law**

Relying on § 621.120,<sup>2</sup> the Board argues that Brown's complaint is untimely. The statute provides, in pertinent part:

Upon ... refusal of such agency to issue or renew a license of an applicant who has passed an examination for licensure or who possesses the qualifications for licensure without examination, such applicant may file, within thirty days after the delivery or

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<sup>2</sup> Statutory references are to RSMo Supp. 2000.

mailing by certified mail of written notice of such refusal to the applicant, a complaint with the administrative hearing commission.

Consistent with § 621.120, the Board's decision letter advised Brown that any complaint must be filed with this Commission within thirty days of the "date of mailing or delivery" of the Board's decision, whichever is earlier. In this instance, it was the mailing date of the Board's decision that was the earlier date; therefore, Brown had thirty days from October 9, 2014 to file her complaint. Thirty days from that date was November 8, 2014. Because November 8, 2014 was a Saturday, the last day to file the complaint was the next business day, November 10, 2014.<sup>3</sup> Brown filed her complaint on November 13, 2014, three days out of time.

The untimely filing of Brown's complaint deprives us of jurisdiction to hear it.<sup>4</sup> If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.<sup>5</sup>

### Summary

Brown's complaint was untimely filed. We dismiss it for lack of jurisdiction, and cancel the hearing.

SO ORDERED on January 30, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>3</sup> Section 621.205.2.

<sup>4</sup> *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. 1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984).

<sup>5</sup> *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).